

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 05-131
RE: JUDGE BRANDT C. DOWNEY, III

Case No.: SC 05-2228

**RESPONSE AND OBJECTIONS TO THE HONORABLE BRANDT C. DOWNEY, III'S
MOTION AND AMENDED MOTION FOR DISCOVERY PURSUANT TO RULE 12**

Special Counsel for the Florida Judicial Qualifications Commission responds to the Honorable Brandt C. Downey, III's ("Respondent") motion for discovery pursuant to Rule 12, Florida Judicial Qualification Rules, and amended motion for discovery pursuant to Rule 12, Florida Judicial Qualification Rules, as follows:

1. At this time, the names and addresses of all witnesses whose testimony Special Counsel expects to offer at the hearing, either live or by deposition, are:

Honorable Linda R. Allan
Chamber 8
14250 49th Street North
Clearwater, Florida 33762

Assistant State Attorney Described in Paragraphs 9
through 12 of Count III of Notice of Formal Charges

Assistant State Attorney Described in Paragraphs 13
and 14 of Count III of Notice of Formal Charges

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Judicial Assistant(s) to Judge Downey
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Jurors in State v. Wilson (Case No. CRC-03-00026F-ANO-K)

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Persons who witnessed a sleeping juror
in State v. Wilson (Case No. CRC-03-00026F-ANO-K)

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2. Special Counsel is in the early stage of its investigation. Accordingly, the names of witnesses whose testimony Special Counsel expects to offer at the hearing may be added or deleted, including the names of computer forensic experts.

3. Special Counsel is producing with this list all written statements and transcripts of testimony in its possession of those persons listed.

4. Special Counsel objects to Respondent's amended motion for discovery pursuant to Rule 12, Florida Judicial Qualifications Commission Rules, to the extent the amended motion requests video or audio tapes, private investigator's notes, letters, memorandum, e-mails, and correspondence with Special Counsel, as these requests are outside the scope of discovery permitted by Rule 12. Special Counsel reserves all other applicable objections and privileges with respect to these tapes and documents.

5. Additionally, Special Counsel is not in possession of video or audio tapes of any interviews conducted by Bob Butler, special investigator to the Florida Judicial Qualifications Commission, as Mr. Butler did not in any form tape record interviews he conducted for the Commission in this investigation, and did not possess audiotape or videotape equipment during these interviews. See Affidavit of Robert W. Butler, ¶ 6, attached hereto as Exhibit 1.

6. Moreover, Mr. Butler did not create any transcripts of his interviews, and did not use these interviews to create written statements for the witnesses. Id. at ¶ 5. Instead, Mr. Butler used his handwritten notes from his interviews (which notes are not a transcript of the interviews), along with his memory and mental impressions of the interviews, to create a written summary of each interview. Id. These notes and summaries are not within the scope of

discovery of Rule 12, Florida Judicial Qualifications Commission Rules, and Special Counsel reserves all applicable objections and privileges with respect to these notes and summaries.

SMITH HULSEY & BUSEY

By _____
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And

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General Counsel for the Florida
Judicial Qualifications Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to Brandt C. Downey, III, 315 Court Street, Room 421, Clearwater, Florida 33756, Thomas C. MacDonald, Esq., 1904 Holly Lane, Tampa, Florida 33629, John R. Beranek, Esq., Ausley & McMullen, P.A., Washington Square Building, 227 South Calhoun Street, Tallahassee, Florida 32302, this ____ day of March, 2006.

Attorney

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